

General Information Letter: No depreciation deduction is allowed except to the extent taken into account in computing the federal taxable income of the taxpayer corporation.

February 8, 2001

Dear:

This will serve as a reply to your letter dated January 24, 2001 to the Legal Services Bureau. That letter was a follow-up to a prior letters to the Department of Revenue ("Department") dated September 12, 2000 and January 18, 2001, respectively. I am advised that you have recently discussed this matter by phone with Mr. Paul Caselton, Deputy General Counsel, and that he has related the Department's position in this matter. Therefore, this is merely written confirmation of the principles explained that discussion.

Department regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200). The nature of your question and the information provided require that we respond only with a GIL.

In your letter dated September 12, 2000, you stated as follows:

Enclosed is a copy of your notice BTR – 76 dated September 1, 2000. In this notice you state that you have reduced to zero the amount claimed in "Other Subtractions" because, as they were identified on our return, these items appear to be taxable. I can not speak to whether or not the amount was listed in the proper section of the return. However, I can tell you that the amount is deductible.

Enclosed is a worksheet which lists the difference between the depreciation expense that is deductible for Federal Tax and State Tax for these assets. The reason for the difference in bases between Federal and State for depreciation is due to a fire in xxxxxxxx, GA which destroyed all of our assets. Under IRC Section 1033 for Georgia State Tax purposes which required us to use the higher bases for the replacement assets. Since the Federal Bases of these assets were a replacement or reduced bases, the Federal Depreciation is significantly lower than the State Depreciation. The enclosed schedule lists the effected assets and calculates the additional depreciation deduction for State tax purposes. If the deduction was listed on the tax form improperly, please advise. However, the depreciation deduction is valid.

Your second letter, dated January 18, 2001, and addressed to Mary Austin of the Department's Business Processing Division, reads thusly:

Enclosed is your letter dated 1/9/01 regarding our claim of \$229,622 as "Other Subtractions". I have also enclosed my working paper which identifies this deduction from Illinois Taxable Income. All of the assets listed on the enclosed working paper are replacement assets used in an Internal Revenue Code Section 1033 transaction. The involuntary conversion of some of our assets, by fire, in Georgia were replaced with assets that were placed in operation in other States. Because of this, we were required to reduce the basis of the replacement assets by the amount of the insurance proceeds in order to defer the gain. We were able to do this for Federal Tax purposes, but since the assets were not placed in service in Georgia, we could not defer the gain for Georgia State Tax. Since no gain was deferred for State Tax purposes, the replacement assets carry a higher basis for State Tax depreciation; and therefore produce more depreciation expense. The enclosed list shows the Federal Depreciation Expense, the State Depreciation Expense, and the difference between them both for the year ended 6/30/99.

The difference between the Federal and State Depreciation Expense is \$229,622 which is listed on the working paper and the Illinois Tax Return on line 5f. While it may be true that this adjustment is possibly listed on the correct line, the expense/deduction is still valid. If the expense should be listed on another section of the return, if the return can be filed as originally received, or if some other action is required on the part of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, please advise.

Your follow-up letter of January 24, 2001 states as follows:

Enclosed you will find xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Illinois Tax return for the Year Ended June 30, 1999, a form BTR – 76 (Taxpayer Notification) regarding that return, my letter dated September 12, 2000 which is in response to the BTR – 76, an LTR – 351 (Error Notice Response) regarding the same subject of the BTR – 76, and my letter dated January 18, 2001 which is in response to the LTR – 351. I finally received a phone call from the Department of Revenue suggesting that I contact the Legal Department, not the Audit Department, to resolve this matter.

Please be initially advised that there is a provision of the Illinois Income Tax Act (IITA) which prohibits the taking of unauthorized deductions. IITA Section 203(h) states:

(h) Legislative Intention.

Except as expressly provided by this Section there shall be no modifications or limitations on the amount of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income or taxable income for federal income tax purposes for the taxable year, or in the amount of such items entering into the computation of base income and net income under this Act for the

taxable year, whether in respect of property values as of August 1, 1969 or otherwise.

There is no subtraction modification of the type claimed by xxxxxxxxxxxxxxxxxxxxxxxxxx at line 5f of its 1999 Illinois return. Thus, the claimed deduction for depreciation expense is in fact invalid.

Please be advised however that, unlike Georgia, Illinois follows the federal treatment of this transaction. For Illinois purposes, the taxpayer also retains the lower basis in the replacement assets. No gain is currently recognized. This will continue to be the case until gain is recognized federally, at which point it will be included in Line 1 income to the extent it is included in federal taxable income.

Application of these principles will not adversely impact the taxpayer in this instance. Since no gain was recognized federally to report in federal taxable income, there was no additional income on which to pay Illinois income tax and no Illinois income tax was actually paid thereon. Therefore, we are advising our Business Processing Division to adjust to zero the erroneous claimed deduction in accordance with their prior correspondence to you. If you have any further questions regarding this matter, please feel free to contact this office.

Sincerely yours,

Jackson E. Donley,  
Senior Counsel-Income Tax